IN THE HIGH COURT OF PUNJAB AND HARYRNA AT CHANDIGARH

C.R. No.354 of 2006
Date of Decision:- 05.09.2006

Singara Singh ....Petitioner

through
Mr.A.K.Jain, Advocate.

vs.

Ranjit Singh and others ....Respondents

through
Mr.Kamal Sharma, Advocate.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT

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SURYA KANT, J.

This revision petition has been preferred by one of the defendants who is aggrieved at the order dated 24.11.2005 passed by the learned Additional District Judge, Jind whereby the appeal filed by the respondents-plaintiffs has been accepted and during pendency of the suit, the defendants have been restrained "from interfering in the possession" of the respondent-plaintiffs over the subject land.

The declaratory suit has been filed averring that the respondent-plaintiffs are owners in possession of the subject land in terms of agreement/exchange deed dated 6.2.1989 and are entitled to get it mutated in their names in the revenue record. They have also sought declaration that the sale deed dated 27.12.2004 executed by the set of defendant No.1 in favour of set of defendant No.2 is null and void and is not binding on their rights. In the said suit, the plaintiff-respondents moved an application under

Order 39 Rules 1 and 2 read with Section 151 CPC for the grant of ad interim injunction against dispossession. Their aforesaid application was, however, dismissed by the learned trial Court vide its order dated 16.9.2005.

Aggrieved, the respondent-plaintiffs preferred an appeal which has since been allowed by the First Appellate Court vide its impugned order dated November 24, 2005.

Notice of motion was issued and in response thereto the respondent-plaintiffs have put in appearance.

I have heard learned counsel for the parties and perused the impugned orders.

The primary contention raised on behalf of the petitioner is that the alleged exchange deed dated 6.2.1989, the execution of which is otherwise disputed, is an unregistered document and, thus, does not confer any title. It is contended that though the alleged exchange deed was executed on 6.2.1989, the entries in the revenue record continue to reflect the petitioner and his co-defendants in possession of the subject land. It is also argued that one or two stray entries, that too by the canal authorities only, are wholly insufficient even to, prima facie, hold that the respondent-plaintiffs are in possession of the disputed land.

On the other hand, it is argued on behalf of the respondents that the exchange deed dated 6.2.1989 was followed by delivery of possession as is recited in the deed itself. According to the learned counsel, the registration of such like exchange deed is not mandatory and for the collateral purposes, namely, to find out as to who is in possession of the subject land, the contents of the said deed, can be referred to and relied upon. It is also argued that the documents placed on record by the

plaintiffs-respondents clearly indicate their physical possession over the suit land.

The impugned order dated November 24, 2005 passed by the learned First Appellate Court reveals that though the exchange deed dated 6.2.1989 is not a registered document, however, there are binding judicial precedents of this Court that if the memorandum of exchange is followed by delivery of possession, it is not compulsorily registrable. The First Appellate Court has further taken notice of the fact that there can be an oral exchange also. Relying upon certain entries made in the record of Canal Authorities, the First Appellate Court has, prima facie, found that the respondent-plaintiffs are in possession of the subject land.

The scope of interference in injunction matters by a revisional Court is well settled and unless a strong case of 'perverse finding' or 'misreading of evidence' or of the observations which are contrary to the settled law, is made out, the revisional Court would always be reluctant to interfere. From the pleadings and the observations made by the First Appellate Court, it appears that both the parties are contesting the dispute over a legal issue, namely, as to whether or not the memorandum of exchange deed dated 6.2.1989 requires compulsory registration or not. This issue shall be gone into by the trial Court on the basis of the evidence and/or the Legal provisions. It is not desirable to make any observation at this stage in relation thereto as it may unnecessary prejudice either of the parties. The memorandum of exchange, as prima facie, observed by the First Appellate Court, has been acted upon for a sufficiently long period, I, therefore, do not deem it appropriate to interfere in the impugned order passed by the learned First Appellate Court.

However, keeping in view the fact that in relation to the two pieces of land, the rights or entitlement of the parties are yet to be determined in the civil suit, it is directed that the plaintiffs as well as the defendants shall not alienate, transfer, mortgage or create any type of incumbrance on the pieces of lands which are in their respective possession.

With these observations and directions, this revision petition is disposed of.

September 05, 2006 **(SURYA KANT)**
poonam **JUDGE**